

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

Second Appeal No. 1028 of 2005  
with  
Civil Application No.1545 of 2005

1. Shri Vasant Munga Patil  
and others ..Appellants

vs.

Shri Anant Shankar Khutale ..Respondent

Shri Rahul P.Walvekar for appellants.  
Shri Kiran J.Kandpile for respondent.

**CORAM: D.B.BHOSALE J.**  
**22nd January, 2007**

**P.C.**

1. Heard the learned Counsel for the parties.

2. This second appeal challenges the judgment and order dated 22nd February, 2005 rendered by the Appeal Court by which the appeal filed by the respondent/plaintiff was allowed. The appeal was directed against the judgment and order dated 21st March, 2001 passed by Joint Civil Judge, Jr.Dn., Panvel by which the suit was dismissed. The suit was filed by the respondent/plaintiff for partition and separate possession of his share in the suit properties. The Appeal Court directed the defendants to give 1/10th share in the suit properties to the plaintiff and separate

possession thereof. The claim of the plaintiff was based on a will executed by his mother Mainabai. She was the first wife of Munga Marya Patil. The defendants are the children of Savitabai Patil, the second wife of Munga Marya Patil. Shri Walvekar, the learned counsel appearing for the appellants assailed the judgment mainly on the ground that the will executed by Mainabai dated 12th October, 1993 in favour of the respondent/plaintiff was illegal. In support of his contention he took me through the deposition of the witnesses as also the findings recorded by the Trial Court. My attention was also invited to the Will at Exh.82 to contend that the corrections and overwritings in the Will are of substantial nature, which demonstrate the manipulation and hence sufficient to hold that the Will is illegal. My attention was invited to the findings of the Trial Court in paras 10 to 12 of the judgment. He submitted that the Appeal Court did not appreciate the evidence on record as it was done by the Trial Court and wrongly held that the Will of Mainabai is legal. I perused the entire record and in particular the documents to which my attention was specifically invited. I do not find any

substance in the submissions advanced by the learned Counsel for the appellants. The Appeal Court has considered the evidence led by the appellants in order to prove the will which is discussed in paras 14 to 19 of the judgment. The correction and overwritings in the Will are absolutely negligible and were necessary. I am satisfied that the evidence is appreciated in proper perspective and the conclusions drawn are correct and do not warrant any interference by this Court.

3. Considering the findings of facts recorded by the Court below and as I find that there is sufficient material on record to sustain those findings and considering the extremely limited jurisdiction of this Court under sec.100 of the Code of Civil Procedure to disturb the findings of facts this second appeal deserves to be dismissed and it is dismissed as such.

4. In view of dismissal of the second appeal, Civil Application No.1545 of 2005 does not survive and it is rejected.

**(D.B.BHOSALE J.)**